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REPORT TO THE LEGISLATURE

Sunset Review

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BOARD OF OIL AND GAS CONSERVATION

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The 1977 Sunset Law terminates the Board on July 1, 1983. This review provides information to assist the Legislature in making the decision to modify or continue the Board.

This report presents nine areas for Legislative consideration (page 29) including:

- Managing field operations more effectively.
- Changing board rules relating to natural resource protection.
- Changing laws and rules relating to drilling permits.
- Transferring tax collection to the Department of Revenue.
- Providing vehicles for field personnel.
- Clarifying the laws concerning effective dates of appointments, contracts with former employees, and applicability of MEPA.

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September 1981

The Legislative Audit Committee
of the Montana State Legislature:

Herein transmitted is our sunset performance review of the Montana Board of Oil and Gas Conservation. The review was conducted in response to the 1977 Sunset Law, which terminates the board on July 1, 1983.

The review focused upon an examination of board operations. It did not encompass an audit of the board's financial transactions or overall compliance with state laws.

There are no formal recommendations in the report since the responsibility for such recommendations lies with the Audit Committee. Nevertheless, we discussed the contents of the report with a number of individuals and organizations, including the director of the Department of Natural Resources and Conservation, the members of the Board of Oil and Gas Conservation, the director of the Department of Revenue, the Montana Petroleum Association, and the Northeast Montana Land and Mineral Owners Association.

We wish to express our appreciation to the members of the board and to the director of the department and his staff for the

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assistance they provided during the review. We also wish to thank the members of the oil and gas industry for assistance they gave us.

Respectfully submitted,

James Gillett

James H. Gillett, CPA
Acting Legislative Auditor

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APPOINTIVE AND ADMINISTRATIVE OFFICIALS

BOARD OF OIL AND GAS CONSERVATION

		Term Expires
R.A. Campbell, Chairman	Billings	1983
C.J. Iverson, Vice-Chairman	Shelby	1985
Paul Bunn	Havre	1983
John Sheehy	Big Sandy	1983
Robert Penner	Wolf Point	1985
Bernt Ward	Plentywood	1985
H.V. Nees	Billings	1985

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

Leo Berry	Director

DIVISION OF OIL AND GAS CONSERVATION

Charles Maio	Administrator
Dee Rickman	Executive Secretary

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Chapter I

BACKGROUND

This sunset review addresses state regulation of oil and gas drilling and production by the Board of Oil and Gas Conservation--a state board administratively attached to the Department of Natural Resources and Conservation.

REPORT OBJECTIVES

The 1977 Legislature passed a law terminating numerous regulatory boards and agencies, including the Board of Oil and Gas Conservation. This law, commonly referred to as the "sunset law," requires the Legislative Audit Committee to conduct a performance review of each terminated agency. The performance review must objectively examine the need for each regulatory board/agency and the Audit Committee must offer recommendations for reestablishment, modification, or termination.

The sunset law also requires an examination of the following questions during the conduct of the committee's review:

(a) Would the absence of regulation significantly harm or endanger the public's health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public's health, safety, or welfare?

(c) Is there another less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of, and have as their primary effect, the protection of the public?

Using the information contained in this report, and that gathered during a public hearing, the committee will address these six questions. During the hearing process, testimony and comments will be heard from the board/agency, the industry, and interested members of the public.

In defining legislative intent, the sunset law states that by requiring periodic evaluation in the form of a performance review, the legislature will be in a better position to ensure that agencies and their programs exist only to be responsive to state residents' needs. The sunset law terminates the Board of Oil and Gas Conservation on July 1, 1983.

OIL AND GAS INDUSTRY

The oil and gas industry in Montana began in 1915 with the discovery of oil in the Elk Basin area of southern Montana. With the discovery of large quantities of oil near Cut Bank and Shelby in the 1930s, northern Montana became the major production area. In the 1950s, oil was discovered in the Williston Basin in northeastern Montana. By the mid-1950s, this area was producing the majority of the oil in Montana. Overall, oil production in the state peaked in the late 1960s, after the discovery of oil in the Powder River Basin in southeastern Montana. Production has gradually declined since then from nearly 50 million barrels per year to approximately 30 million barrels per year.

In the early days of the industry, natural gas was a nuisance and a hazard. During oil production it was either released directly into the atmosphere (vented) or, if found in too large of quantities, was burned (flared). As prices rose and distribution systems became more prevalent, natural gas became worthwhile to produce either in association with oil or by itself. With the discovery of large quantities of natural gas at relatively shallow depths (often less than 2,000 feet), it has become an important resource to the northern parts of Montana.

There are five major oil and gas exploration areas in Montana.

--Western Montana - the Overthrust Belt

--Northern Montana - the Sweetgrass Arch, Bearpaw Uplift

--Northeastern Montana - the Williston Basin

--Southeastern Montana - the Powder River Basin

--Southern and central Montana - the Big Horn Basin, Big Snowy Uplift

Exploration is just beginning in the Overthrust Belt of Western Montana so there is little production. According to oil industry officials, if Montana's Overthrust Belt is similar to the same formations in Wyoming, Utah, and Alberta, it will become an important producing area. Illustration 1 shows the activity of each of the regions for 1980. Because all of the overthrust production occurs in counties lying in Region II, board records show no production in the overthrust area of Region I. Therefore, an unknown amount of overthrust production is included in the Region II totals.

OIL AND GAS ACTIVITY IN MONTANA (1980)

	Geologic Region	Oil Production (Million Barrels)	Gas Production (Trillion Cubic Feet)	Producing Wells	Shut-In Wells	New Oil Wells	New Gas Wells	Dry Holes
I	Western	0.0	0.0	0	0	0	0	6
II	Northern	3.5	44.3	3,972	693	88	190	215
III	Northeastern	17.7	3.3	1,170	221	119	4	76
IV	Southeastern	4.7	3.1	185	168	21	7	42
V	Southern and Central	3.7	3.1	568	139	43	14	127
	Total	29.6	53.8	5,895	1,221	271	215	456

Source: Compiled by the Office of the Legislative Auditor.

Illustration 1

The board regulates several hundred companies involved in the Montana oil and gas industry. The companies which appear on board records range in size from major oil companies to small, independent producers and drillers. The board also indirectly regulates many other companies which perform subcontracted work for the companies of record. These subcontractors include excavators, well drillers, production companies, transporters of oil and gas from the fields to the users, and service companies which provide cement, log wells, etcetera.

Chapter II

THE BOARD OF OIL AND GAS CONSERVATION

INTRODUCTION

Until the creation of the Oil and Gas Conservation Commission in 1953, regulation of the oil and gas industry consisted of limited oversight by the Montana Railroad Commission (now the Public Service Commission). The original Oil and Gas Conservation Commission consisted of five members appointed by the Governor, with two members representing the industry and three public members. In 1971, during Executive Reorganization, the Commission was attached to the Department of Natural Resources and Conservation and was renamed the Board of Oil and Gas Conservation. The 1979 Legislature changed the number of members and the composition of the board.

BOARD OPERATIONS

Structure

The board consists of seven members who are appointed by the Governor and confirmed by the Senate. Three of the members are representatives of the industry with at least three years experience. Two are landowners residing in oil producing counties. One landowner is required to own mineral rights, while the other is not. The remaining two members are selected at large.

Since the board is designated as quasi-judicial, one of the members must be an attorney. The members serve four-year terms, with four members serving terms concurrent with the Governor. The other three members' terms expire on January 1 of the third year of the Governor's term. The board members receive

$25 per day plus travel expenses as provided by state law when on state business. The total board compensation for fiscal year 1980-81 amounted to approximately $11,000.

Staffing

The board is attached for administrative purposes to the Department of Natural Resources and Conservation (DNRC) which provides accounting and statistical services to the board. The board is autonomous with respect to policymaking. It has authority to hire the staff of the Oil and Gas Conservation Division which carries out board policies.

The division maintains offices in Helena, Billings, and Shelby. The administrator, technical staff, two field personnel, and most of the board's records are located at the main office in Billings. The Helena office houses three of the staff, including the board's executive secretary, and some board records. The division has three staff members in the Shelby office. Two division field personnel in Glendive and Reserve use their homes as offices. The field inspector in Sidney rents a small office.

The division is authorized 20 staff members. Four of these positions are for the board's technical staff, including the petroleum geologist, petroleum engineer, petroleum statistician, and one position which has not been designated or filled. The remaining personnel are the executive secretary, seven field inspectors, and eight administrative and clerical positions.

The board contracts with a private attorney, who specializes in oil and gas law, at the rate of $50 per hour plus expenses. The attorney advises the board on all matters of law and attends all board meetings. The board spent $17,500 in fiscal year 1980-81 for the pay and travel expenses of the attorney.

The technical staff provide the following services to the board:

- --Analyze technical data presented by parties concerning applications for wells and exceptions to drilling requirements.
- --Cross-examine expert witnesses during hearings concerning technical matters.
- --Advise the board on technical matters.
- --Issue drilling permits.
- --Analyze and make determinations concerning applications for price changes under the Natural Gas Policy Act.
- --Supervise the compilation and maintenance of records and statistics.

Since the board often has highly qualified technical witnesses testifying before it, the board believes its technical staff should be as highly qualified. To attract and retain such people, the board sought and received an exemption from the state's classification and pay plan for these positions. In the two years since the exemption was granted, the salaries have nearly doubled. The board's top technical staff are paid between $35,000 and $45,000 per year. We found that the board's salaries are not out-of-line with other states in the region since regional salaries range from $30,000 to $60,000. However, Montana's salaries are below private industry. For example, the board's former petroleum engineer left for a job in private industry at about a 50 percent salary increase. The board has been unable to find a suitable replacement during the first eight months of 1981.

The field inspectors cover five regions in the state. Each field inspector is responsible for inspecting oil and gas production facilities, drilling rigs, and well abandonment and reclamation. They also investigate complaints and follow up reports of oil or saltwater spills. The location of the inspectors is based upon the oil and gas activity in each region. The field inspectors are paid between $12,000 and $16,500 per year. Comparable positions in North Dakota receive $15,000 to $22,000 while Wyoming pays $21,000 to $30,000.

Funding

The board and division are funded through an account in the Earmarked Revenue Fund. The money for the operations comes primarily from the fees for drilling permits and from a tax on oil and natural gas produced in Montana. The drilling permit fees are $25, $75, and $150, depending on the depth of the well. The law allows the board to set the amount of the tax on production up to two-tenths of one percent of the gross value of each barrel of oil, or thousand cubic feet of gas (MCF) produced. The tax has been lowered twice, once in 1979 and once in 1980. The first reduction was from two-tenths to one-tenth of one percent. The second lowered the tax to five hundredths of one percent.

The collection of the tax is handled by the Centralized Services Division of DNRC. For collecting the tax and providing some analysis of production data, the Centralized Services Division receives approximately 10 percent of the board's appropriation.

The following illustration depicts the financial history of the board from fiscal year 1975-76 through fiscal year 1980-81. Fund balances are as of June 30 each fiscal year. The basis of the tax was changed from a flat fee per barrel or MCF to a percentage of the value in 1977 to provide funding for the construction of new offices.

BOARD FINANCES

Fiscal Year	Revenues	Expenditures*	Fund Balance
1980-81	$762,949	$524,518	$839,261
1979-80	$802,612	$492,467	$600,830
1978-79	$713,519	$794,338**	$290,685
1977-78	$623,013	$409,397	$371,504
1976-77	$290,535	$298,266	$157,888
1975-76	$288,269	$287,928	$165,619

*Includes approximately 10 percent for services provided by DNRC.

**The expenditures were high due to the construction of a new office building in Billings.

Source: Compiled by the Office of the Legislative Auditor

Illustration 2

While the board reduced the size of the Oil and Gas Producers tax by half in October of 1980, oil prices have almost doubled. Therefore, the increase in oil prices should offset most of the tax rate decrease. The board ended fiscal year 1980-81 with a fund balance of approximately $840,000 or nearly twice the yearly board expenditures.

BOARD GOALS AND OBJECTIVES

The sunset law requires each board/agency under review to define its goals and objectives. The stated goal of the board is to:

> Prevent waste and provide for the conservation of crude oil and natural gas through regulation of exploration and production activities.

Based upon the preceding goal, the stated objectives are to:

Inspect and monitor drilling, production, and seismic operations of approximately 750-800 new wells per year and approximately 3,500 producing wells.

Investigate all complaints, spills, and accidental discharges.

Provide engineering studies of estimated reserves on approximately 150 oil fields, classify all new wells, issue approximately 900 drilling permits per year, and provide technical assistance for secondary recovery programs and pooling orders as needed.

Provide a current, complete well data file, including core and drill cuttings, by processing approximately 420 wells per year.

Provide periodic public hearings as a means for land and mineral owners, industry representatives, and other interested parties to resolve disputes and establish procedures for the prudent development of oil and gas reserves.

Make natural gas price eligibility determinations under the federal Natural Gas Policy Act of 1978.

Publish an annual review relating to oil and gas activities and a monthly statistical bulletin.

BOARD FUNCTIONS

Under Title 82, Chapters 10 and 11, MCA, the board is charged with regulating almost all aspects of Montana oil and gas exploration and production. The following sections discuss the board's activities in each facet of regulation.

Drilling Permits

Prior to drilling a well in search of oil or gas, an operator must have a permit from the board. The board issued 1,227 drilling permits in 1980. The board has delegated the function of reviewing and approving permit applications to the staff. The applicant is required to submit an application showing the location of the proposed well, the plan for drilling, and the proper fee. The fee is $25 for a well which is 3,500 feet or less, $75 for a well

3,501 feet to 7,000 feet, or $150 for a well more than 7,000 feet deep. A surety bond or a certificate of deposit pledged to the board amounting to $5,000 for a single well and $10,000 for multiple wells must also be filed. The purpose of the bond is to assure that proper plugging and reclamation procedures are followed.

The staff reviews the application for completeness. They check to see that the location of the well conforms to all applicable regulations. If there are no problems, the staff issues a permit to drill. Should a problem be noted, the staff notifies the applicant, who is given an opportunity to correct it. If the problem relates to the proposed location of the well or the method of drilling and the applicant cannot comply with board rules, the applicant may apply for an exception to the rules.

The law also requires the operator to notify the surface owner of his drilling plans. The notice must be sufficiently detailed to enable the surface owner to evaluate the effects on the surface owner's use of the property.

Upon completion of the well, the operator decides whether to produce the well, to cap the well for later production (shut-in), or to abandon the well. At this time, the operator files a completion report with the board which includes well logs, well cores, drill cutting samples, and other information on the well.

Abandonment and Reclamation of Well Sites

When a well has been drilled and it is determined to be a dry hole or when a well no longer produces enough to be economical, the operator notifies the division of the intent to abandon the well.

The division provides the operator with guidelines for the abandonment. These include the placement of cement plugs in the well, recontouring and reseeding the site, and placement of a marker at the site. Reclamation procedures required by the division include removing or burying all waste. The operator must also notify the surface owner within 15 days of abandonment.

In general, an operator is required to seal all geologic strata which produce oil, gas, or water with cement plugs at least 100 feet long. There may not be more than 2,500 feet between plugs. The only exception to this is if water has been found and the surface owner wishes to use it as a water well. In such cases, the division will waive the plugging requirement upon presentation of a written agreement between the operator and the surface owner.

Finally, the division requires the placement of a permanent marker at the site. This is usually a 4-inch, or larger, pipe at least 10 feet in length, either set in cement or welded to the casing of the well, and with at least 4 feet of the pipe above ground. The name of the operator and the location of the well are either welded or stenciled onto the pipe. If the surface owner does not wish such an obstruction on his land, the marker requirement may be waived.

Once the operator has complied with the requirements, a subsequent report of abandonment is sent to the division. The field inspectors review the abandoned locations to assure compliance. If the site has been properly reclaimed and marked, the well bond is released. If not, the operator may take steps to bring the site into compliance or the board may collect on the bond and hire a party to reclaim the site.

Board Hearings

The board meets approximately nine times per year at various sites throughout the state. Illustration 3 shows the number of meetings and their locations for the past five years.

BOARD MEETINGS AND SITES
(1976 THROUGH 1980)

Year	Number of Meetings	Locations
1976	9	Billings (6), Cut Bank, Sidney, Helena
1977	8	Billings (5), Helena, Kalispell, Sidney
1978	7	Billings (4), Cut Bank, Kalispell, Sidney
1979	9	Billings (6), Havre, Sidney, Kalispell
1980	8	Billings (7), Helena

Source: Compiled by the Office of the Legislative Auditor.

Illustration 3

At these meetings, the board meets with the staff to review problems and set policy. However, the most important function of these meetings is to hold public hearings on a variety of issues, including:

--Delineating an oil or gas field or making changes in established boundaries.

--Making rules regarding the allowable locations of wells.

--Granting exceptions to the rules on locations due to topographic problems or the chance of getting a producing well.

--Ordering the pooling of interests in a spacing unit or the unitizing of a field so that the parties share in the oil or gas extracted, depending upon the estimate of the oil or gas underlying the land they have an interest in and the percentage of that interest.

--Issuing other orders, including permission to inject wastewater into the ground, to use water to extract more oil, to drill other than a vertical well, to flare gas in excess of board rules, etc.

All applications for hearings require public notice. Illustration 4 summarizes the types of hearings held by the board and the board's actions for calendar years 1976 through 1980.

BOARD HEARINGS AND ACTIONS
(1976 TO 1980)

Type of Application	Board Action	1976	1977	1978	1979	1980	Total
Delineate or Revise Field Boundaries	Approve	30	25	36	38	31	160
	Deny	1	1	2	0	0	4
	Withdrawn	1	1	1	0	3	6
Establish or Revise Spacing	Approve	6	4	4	6	6	26
	Deny	0	0	0	0	1	1
	Withdrawn	1	0	0	0	0	1
Exception to Spacing Rules	Approve	14	13	7	21	38	93
	Deny	0	0	0	0	0	0
	Withdrawn	0	1	0	0	4	5
Pooling or Unitizing	Approve	13	7	16	13	25	74
	Deny	0	0	0	0	0	0
	Withdrawn	1	1	0	0	2	4
Other*	Approve	18	9	15	16	37	95
	Deny	0	0	0	3	1	4
	Withdrawn	0	0	0	0	0	0
Total	Approve	81	58	78	94	137	448
	Deny	1	1	2	3	2	9
	Withdrawn	3	3	1	0	9	16

*Includes such items as water injection, enhanced recovery, directional drilling, flaring, etc.

Source: Compiled by the Office of the Legislative Auditor.

Illustration 4

At the hearings, proponents and opponents are allowed to present witnesses, to present documentary evidence, and to cross-examine other parties' witnesses. Most parties are represented by attorneys. The board and the technical staff examine the documents and question each of the witnesses.

Once the evidence has been presented, the board discusses the application and makes a decision either at the same meeting or a future meeting. During the discussion, the board members present their opinions and request the professional judgments of the technical staff and their attorney. Approval of an application requires the concurrence of four board members.

Natural Gas Policy Act Determinations

In 1978, Congress passed the Natural Gas Policy Act (NGPA) which allows certain natural gas producers to apply for higher prices for their natural gas. This law was enacted to encourage the drilling of new gas wells and to encourage the production of gas from marginal wells. The states were given the option of accepting responsibility for reviewing the applications under the supervision of the Federal Energy Regulation Commission (FERC). The board accepted the responsibility and received authority from the 1979 Legislature to act as the jurisdictional agency for Montana.

The NGPA allows natural gas producers to receive higher prices for natural gas from certain qualifying wells. While the price for much natural gas is controlled at less than $1 per MCF, the NGPA allows qualifying natural gas to be sold at two and one-half to three times that much.

The NGPA applications are reviewed by the staff which sends its recommendations on to FERC. FERC then either approves or denies the Montana staff's recommendations. In virtually all cases, the staff recommendations have been approved.

All applications for NGPA determinations in Montana fall into one of the three following categories:

--Section 102 - New Gas - a new well at least 2.5 miles from a previously producing well, an old well which is deepened and producing from at least 1,000 feet below its former producing depth, or a well in a new gas reservoir.

--Section 103 - New On-Shore Well - Any new well drilled after February 1977 which is not located within a previously producing unit.

--Section 108 - Stripper Well - Any well producing less than 60 MCF per day on the average.

Illustration 5 shows a breakdown of the NGPA applications processed.

NATURAL GAS POLICY ACT APPLICATIONS
(1979 and 1980)

Year	Action	Section 102	Section 103	Section 108	Total
1979	Approved	93	85	124	302
	Denied	2	0	22	24
	Withdrawn	0	0	2	2
1980	Approved	106	83	69	258
	Denied	1	0	3	4
	Withdrawn	1	0	1	2
	Deferred Pending Submission of Data	0	0	8	8

Source: Compiled by the Office of the Legislative Auditor

Illustration 5

Waste of Oil and Gas

The board is charged with preventing the waste of oil and gas. Actually, the board cannot prevent waste, but it has instituted procedures to control waste.

The board requires operators to report all incidents in which more than 50 barrels of oil or 3,000 MCF of gas are lost. In practice, many operators report any accidental loss of oil or gas no matter what amount. The board encourages operators to recover as much oil as possible through its regulation of the clean-up of oil spills.

In 1978, the board approved rules which prohibit the flaring or venting of natural gas in excess of 100 MCF per day. Since the rules went into effect, the board has granted very few exceptions to the rules. The exceptions were for cases in which the board determined that marketing the gas was not economical and that reducing the amount of gas flared or vented to less than 100 MCF per day could damage the oil well. The board has shut-in wells for up to 90 days for violations of the flaring rules.

To promote the maximum production of oil and gas, the board has established regulations regarding the spacing of wells. Prior to these regulations, the "Rule of Capture" applied to oil and gas production. This legal principle provides that oil and gas belongs to whoever produces it. Without spacing regulations, wells were drilled near property boundaries to drain the oil and gas from under neighboring land. In response, the neighbor would drill a well near the existing well. The operators of neighboring wells would produce them as fast as possible to recover their shares of the resource. An official of the Interstate Oil and Gas Compact Commission estimated that drilling wells close together and producing them rapidly recovered less than one third of the reserves which could have been recovered under more orderly development. The board's spacing wells provides for orderly production of the resources.

Inspections, Incidents, and Complaints

As noted previously, the board employs seven field inspectors. Their duties include:

--Inspecting oil and gas fields for evidence of waste or pollution.

--Inspecting drilling rigs for proper safety devices to prevent the accidental release of oil or gas and to protect the health of the workers.

--Inspecting abandoned well sites for proper plugging and reclamation.

--Inspecting locations where oil or saltwater spills have been reported.

--Inspecting seismic activity locations for proper reclamation.

--Investigating complaints.

The inspectors set their own inspection schedules and maintain their own records. Four of the inspectors have offices in the board's Billings and Shelby facilities. Of the remaining three, two of the inspectors use their residences, while a third rents a small office. Each inspector is in the field from three to fifteen days per month.

The inspectors perform numerous field visits. However, their records do not contain specifics concerning the number of oil and gas fields visited, the number of drilling rigs inspected, the number of abandoned wells inspected, or the number of seismic locations visited. This situation is discussed further on pages 30 and 31.

Companies report incidents of oil, gas, or saltwater discharges to either the appropriate field inspector or to the main office in Billings. In the latter case, the main office refers the incident to the appropriate field inspector. The field inspectors follow-up on the incidents to assure that the areas have been properly reclaimed. Illustration 6 presents a summary of the incident reports and the recorded field inspector actions.

SUMMARY OF INCIDENT REPORTS (1975 TO 1980)

Type		Size of Discharge		Action	
Discharge into Pit or Diked Area	5	More Than 50 Barrels	4	Cleaned Up and Reviewed	0
		Less Than 50 Barrels	0	Cleaned Up - No Review	4
		Size Not Reported	1	No Action Apparent	1
Leaking Pipeline	44	More Than 50 Barrels	17	Cleaned Up and Reviewed	3
		Less Than 50 Barrels	22	Cleaned Up - No Review	35
		Size Not Reported	5	No Action Apparent	6
Equipment Malfunction	19	More Than 50 Barrels	6	Cleaned Up and Reviewed	0
		Less Than 50 Barrels	9	Cleaned Up - No Review	18
		Size Not Reported		No Action Apparent	1
Explosion or Fire	6	More Than 50 Barrels	1	Cleaned Up and Reviewed	1
		Less Than 50 Barrels	3	Cleaned Up - No Review	1
		Size Not Reported	2	No Action Apparent	4
Damage by Third Party	4	More Than 50 Barrels	2	Cleaned Up and Reviewed	0
		Less Than 50 Barrels	1	Cleaned Up - No Review	4
		Size Not Reported	1	No Action Apparent	0
Pit Washed Out	1	More Than 50 Barrels	0	Cleaned Up and Reviewed	0
		Less Than 50 Barrels	1	Cleaned Up - No Review	0
		Size Not Reported	0	No Action Apparent	1
Total	79	More Than 50 Barrels	30	Cleaned Up and Reviewed	4
		Less Than 50 Barrels	36	Cleaned Up - No Review	62
		Size Not Reported	13	No Action Apparent	13

Source: Compiled by the Office of the Legislative Auditor

Illustration 6

The board and the various field inspectors receive complaints from landowners and other government agencies concerning oil and gas operations. For the most part, the field inspectors attempt to resolve all complaints themselves. Rarely does the board formally review a complaint. Each field inspector keeps his own records on complaints and there is no central record of complaints. We reviewed the records of the various field inspectors and compiled a summary of the complaints. Since some of the records were sketchy and the field inspectors sometimes do not record complaints received, Illustration 7 probably does not present all of the complaints received. The major areas of complaints include contamination of a water supply, improper reclamation of a well, improper water discharges, seismic holes improperly or not plugged, and lack of compensation by the seismic company for surface damage. Other complaints involved flaring of gas, oil spills, trespassing, seismic companies operating without a permit, etcetera.

SUMMARY OF COMPLAINTS (1975 to 1980)

Type		Source		Action	
Contamination of Water Supply	6	Landowner	6	Investigated - No Record of Resolution	2
				Investigated - No Problem Found	4
Improper Reclamation	7	Landowner	7	Investigated - No Record of Resolution	4
				Sent Letters to Company	1
				Other	2
Improper Water Discharge	8	Landowner	2	No Record of Action	3
		Government Agency	6	Investigated - No Record of Resolution	2
				Investigated - No Problem	1
				Sent Letters to Company	2
Seismic Holes Improperly or Not Plugged	15	Landowner	15	No Record of Action	6
				Investigated - No Record of Resolution	4
				Investigated - Problem Resolved	4
				Other	1
Seismic Company Compensation	6	Landowner	6	No Record of Action	4
				Other	2
Other	12	Landowner	9	No Record of Action	5
		Government Agency	3	Investigated - No Record of Resolution	3
				Other	4
Total	54	Landowner	45	No Record of Action	18
		Government Agency	9	Investigated - No Record of Resolution	15
				Investigated - No Problem Found	5
				Investigated - Problem Resolved	4
				Sent Letters to Company	3
				Other	9

Source: Compiled by the Office of the Legislative Auditor

Illustration 7

Well Files

The board maintains records on all oil and gas wells drilled in Montana. These records include report narratives on the geologic formations encountered, electric logs and neutron density logs on the wells, and cuttings from the well core. This information is maintained for use by anyone.

Oil and gas companies use the information to assist them in their planning for drilling. The information on wells drilled in the area, when combined with the company's seismic information, gives a more accurate picture of the underground strata. This library of well information allows for the free exchange of information.

Publications

The board collects data on the production, transportation, and refining of oil and gas. Monthly bulletins are published by the board which detail the activity for each month. Information published includes natural gas production by field, oil production by field, oil in storage, oil refined by refinery and source of oil, and the numbers of new drilling permits and wells drilled.

The board publishes an annual report on oil and gas activity in the state. It reports a five-year summary of oil and gas activity, such as oil production and number of producing wells by region of the state and the number of wells drilled. A summary of the drilling activity in each county is reported. The report includes oil and gas production by field. It shows the source of oil and amounts refined for each refinery in the state. Significant new oil and gas discoveries are reported. Summary information on each oil and gas field is presented, including the geologic formation, the number of producing and shut-in wells, and the well spacing and field rules.

Chapter III

OTHER REGULATION

FEDERAL REGULATION

Federal government agencies regulate the drilling and production of oil and gas, the price of gas, and the cleanup of industry-related pollution. The following sections describe the primary federal agencies including the United States Geological Survey, the Federal Energy Regulatory Commission, and the Environmental Protection Agency.

United States Geological Survey (USGS)

The United States Geological Survey regulates the drilling and production of oil and natural gas on federal lands belonging to the Forest Service, Bureau of Land Management, and the various Indian tribes. They establish spacing regulations, issue drilling permits, and assure proper reclamation, among other duties.

The USGS and the board coordinate their activities, especially in the area of drilling permits and inspections. A firm wishing to drill on federal land in Montana must secure drilling permits from both the USGS and the board. Montana law provides that the board has permit authority over all land in Montana, whether federal, state, or private. In addition, since the USGS has only two field inspectors for Montana and North Dakota, the state inspectors review locations on federal land, as well as those on state and private land.

Federal Energy Regulatory Commission (FERC)

Among its other duties, the Federal Energy Regulatory Commission administers the Natural Gas Policy Act. This act allows natural gas producers to receive higher prices if they meet certain qualifications. For states such as Montana, which have taken primary responsibility for the act, FERC simply reviews the state determinations on eligibility. The board does not receive any federal compensation for helping to administer the act but does it as a service to the industry. For states which have not accepted responsibility, the FERC staff makes the eligibility determinations.

Environmental Protection Agency (EPA)

The Environmental Protection Agency handles the cleanup of pollution from all kinds of chemical spills, including oil. The EPA receives reports of spills from the companies involved or from other agencies, depending on who discovers the problem. The EPA oversees the cleanup of large spills or those occurring on federal land. It has the power to hire someone to cleanup the spill and then force the responsible company to pay the bill. An EPA official noted they rely on the state for overseeing most small spills. The EPA has been involved in about 20 cases in Montana since 1972.

STATE REGULATION

While the regulation of the oil and gas industry is primarily the responsibility of the board, other state and local agencies have some regulatory authority. The Water Quality Bureau of the Department of Health and Environmental Sciences is the primary state water pollution control agency. Pollution of ground or surface water by oil and gas activities is regulated by both the Water Quality Bureau and the board. By informal agreement, the board is the lead agency and tries to resolve problems first. The board has handled all but one of the joint jurisdiction problems to date.

The Department of Revenue collects two taxes on the production of oil and gas. The Oil and Gas Severance Tax amounts to 5 percent of the gross value of oil produced each year and 2.65 percent of the gross value of all gas production. The proceeds are split between the counties where the production occurs and the state general fund. The other tax, the Resource Indemnity Trust Tax, amounts to $25 plus ½ of 1 percent of the gross value of production in excess of $5,000 for each calendar quarter. The proceeds are deposited in an account in the state treasury. Money from that account is appropriated to make improvements or to rectify damage to the environment.

The Department of State Lands issues oil and gas leases on state lands. The department has written a set of environmental restrictions into the lease contracts. These include archeological preservation, erosion control, and the use of the area during critical wildlife periods. State Lands also collects the state's mineral royalties and employs a geologist to assure that the state receives its proper share.

Seismic operations are regulated by the board and to a limited extent by the Secretary of State and the county clerks. A seismic company must file a $10,000 bond with the Secretary of State for each seismic crew operating in the state or a $25,000 blanket bond covering an unlimited number of crews. This bond is intended to assure proper reclamation. The seismic company must also register with the county clerk and recorder of each county in which they are operating. The registration consists of filling out an application form, filing a copy of the bond with the Secretary of State, submitting maps showing the approximate location of the seismic shot lines, and paying a $5 fee. The county clerks then notify the board which seismic companies are registered. The board has the authority to assure proper reclamation of the seismic shot holes.

OTHER STATES

Thirty-seven states, including Montana, have an oil and gas regulatory agency. These states belong to an organization called the Interstate Oil and Gas Compact Commission. The commission serves as a resource for the various member states and as a forum for the exchange of ideas.

The following illustration shows a comparison of regulation between the various other states and Montana.

OIL AND GAS REGULATION COMPARISON

Item	Other States	Montana
Type of Agency	20 Board 16 Agency	Board
Drilling Permit Fee	27 Flat Fee 2 Variable Fee 7 None	Variable Fee
Bonding	31 Yes 5 No	Yes
Voluntary Pooling	32 Yes 4 No	Yes
Compulsory Pooling	33 Yes 3 No	Yes
Compulsory Unitization	30 Yes 6 No	Yes

Source: Interstate Oil and Gas Compact Commission

Illustration 8

Chapter IV

AREAS FOR LEGISLATIVE CONSIDERATION

In previous reviews of regulatory boards in Montana, the design and effectiveness of certain aspects of the regulatory process have warranted legislative consideration. The intent of the following sections is to briefly discuss these aspects as they apply to the Board of Oil and Gas Conservation. The areas for consideration are:

1. Management of Field Operations
2. Number and Placement of Field Inspectors
3. Work Hours of Field Inspectors
4. Natural Resource Protection
5. Drilling Permits
6. Collection and Statistical Functions
7. Vehicles
8. Setting of Oil and Gas Producers Tax
9. Clarification of Statutes

EFFECTIVENESS OF BOARD OPERATIONS

The board has two major functions. It is charged with encouraging the production of oil and gas, but it also must protect the land, water, and rights of the land and mineral owners. Part of our review centered on how effectively the board was carrying out these mandates.

We found that the board's activities seem to be reasonably effective in encouraging production. While Montana's actual production has been declining, this is caused more by national pricing policy and resource depletion than by board actions. The board's rules appear to favor maximum long-term production. Also, the board's library of well information helps provide for a flow of information between companies.

The board's rules and hearing process provide protection for mineral and surface owners. The parties with mineral rights are given notice and opportunity to present their positions before the board. Companies are required to notify the surface owner of their intentions prior to commencing operations. The board notes that the lack of lawsuits in this area involving the board decisions is an indication that the board is doing a good job.

The board's efforts to protect surface owners' rights and other natural resources have been less effective. The major protection for these persons and resources comes from the board's field operations. Our review indicates that the effectiveness of the board's field activities can be improved. The following sections outline the concerns we noted in the field.

Management of Field Operations

The field inspectors schedule their own activities and maintain their own records. The chief field inspector coordinates their activities by trying to visit the other field inspectors monthly.

The only documentation of field inspector activity is their signatures on a form indicating that a location has been properly reclaimed and their submission of a few inspection reports. As for other documentation of daily activity, the field inspectors' records are consistently inadequate.

We found that there is no consistent manner of recording a complaint or its resolution. Often, the only documentation of a complaint is a few notes on a legal pad, in a notebook, or on a scratch pad. The lack of documentation is evidenced by the uncertainty over the number of complaints and their resolution expressed on page 21. In 33 of 54 cases there was either no record of action or resolution. A standard complaint form, a complaint log to keep track of problems, and complaint files could assist the inspectors and the board in keeping track of complaints.

Another area in which documentation was lacking was inspections. The chief field inspector has devised a form for noting inspection problems and reporting them to the relevant companies. Discussions with the field inspectors revealed that most inspectors use the inspection form only occasionally. They prefer to handle problems verbally, if possible. While this may help expedite resolution in some cases, the lack of documentation can be a hindrance if the problem is not resolved expeditiously. Also, there is no record of the number of locations inspected for which there were no problems.

The final area in which documentation is lacking is the follow-up on incident reports. As noted on page 20, the records indicate that the inspectors reviewed the cleanup of only four of the 79 incidents. In the other 75 cases, no independent evidence exists in the files to indicate that the problem had been corrected and the area cleaned up.

Without a system of documentation for field operations, the board cannot determine specific problem areas. It does not know whether the field inspectors are working to capacity or if there is a need for more field inspectors. In addition, the board does not know specifically whether the placement of its field inspectors is proper because it does not know relative workloads. Also, the board is not fully aware of the type or extent of complaints and inspection problems which are occurring. Finally, if one of the field inspectors were incapacitated, his replacement would not be able to tell what had and had not been done.

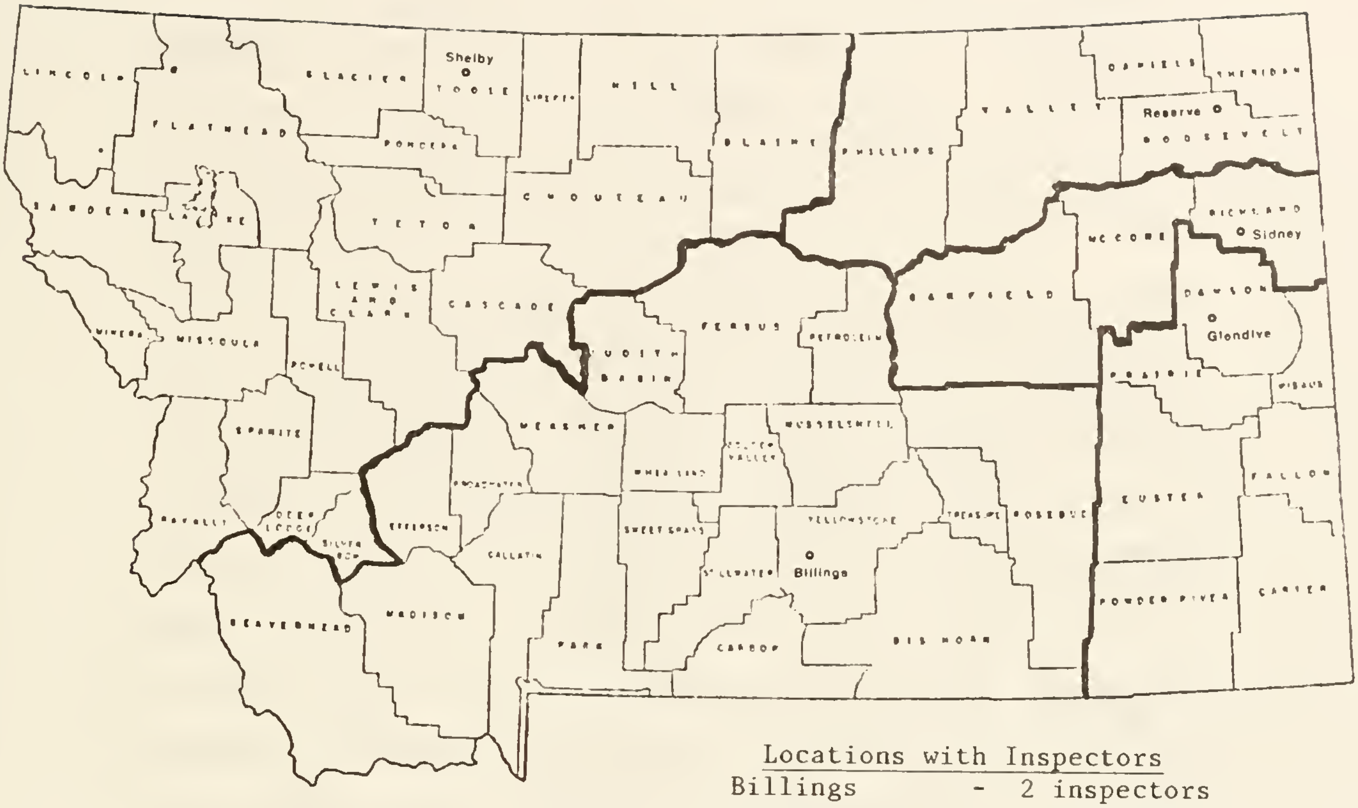
The board should establish a system for the documentation of field activity. This could include the logging of all inspections, the logging of all complaints, the documentation of all activity relative to complaints and inspection problems, and the documentation of follow-up on incident reports. A diary of inspector activity would encompass most of these areas. In addition, the board could use this information to better manage field operations.

Increased Oil and Gas Activity

The previous section discussed the need for management information which can be used to determine the proper number and placement of field inspectors. Another factor influencing the number and placement of field inspectors is the level of oil and gas activity in the state. Our review indicated that oil and gas activity is increasing, and this increase is causing several concerns for the board.

As noted earlier, there are seven field inspector positions, with two located in Billings, one in Glendive, one in Sidney, one in Reserve, and two in Shelby. The areas covered by the field inspectors are shown in Illustration 9.

FIELD INSPECTOR PLACEMENT



Locations with Inspectors		
Billings	-	2 inspectors
Shelby	-	2 inspectors
Glendive	-	1 inspector
Sidney	-	1 inspector
Reserve	-	1 inspector

Illustration 9

After comparing current inspector placement with increased drilling in the Overthrust Area, it is obvious that long travel distances to inspect drill sites from present inspector locations can be expected (i.e., a drilling site near Dillon reviewed by field inspectors from Billings).

Other examples of the result of expanded activity are the large gas fields of Hill, Blaine, Phillips, and Valley counties which get few visits from the present field inspectors. The reason given by the field inspectors for not inspecting all locations within their jurisdiction each year is the time and distance to reach these fields from present locations.

Increased drilling activity means more wells must be inspected. A backlog of unapproved abandoned well locations has developed. Many of these locations are between two and eight years old. We estimate the number of unapproved abandoned locations over two years old to be more than 270. The resulting delay in reclamation and inspection has caused complaints by surface owners who are concerned about the return of the land to agricultural production.

Quite a few complaints from surface owners in northeastern Montana concern the reclamation of seismic shot holes. The board has established rules for their reclamation, but there is little enforcement by the field inspectors. At one time the board had one person checking seismic operations exclusively. With the increase in oil and gas activity, that person's responsibility now is primarily the checking of oil and gas locations. Checking seismic operations is a low priority item among the field inspectors. They rarely conduct spot checks but respond almost exclusively to complaints.

The number and placement of field inspectors must be adequate to provide maximum coverage of production and reclamation activity. By combining data on the amount of oil and gas activity throughout the state with information on the activity of the field inspectors that could be gathered through better management information, the board could better judge and document where field inspectors should be located, or if additional inspectors are needed.

Working Hours for Field Inspectors

Section 39-3-405, MCA, provides for a standard work week of 40 hours for state employees unless paid overtime or granted compensatory time. The Labor Standards Division of the Department of Labor and Industry ruled the field inspectors are not eligible for compensatory time, and it is DNRC policy to keep overtime to a minimum.

The field inspectors, who work the 40 hours in five 8-hour days, commented that this work schedule hampers their inspections at outlying oil fields. For example, the field inspector from Shelby would use his entire eight hours getting to the Leroy Field south of Chinook and back to Chinook, where he could spend the night, without having time to inspect any locations or wells.

The field inspectors in eastern Montana have been working their forty hours in combinations such as four ten-hour days or two twenty-hour days, depending on the demands of their positions. While these odd work schedules appear appropriate, their implementation does not address any need to work more than 40 hours in a given week.

Since the irregular hours of the industry and the long travel distances for the field inspectors do not lend themselves to a standard 40-hour work-week, the board should seek authorization for compensatory time for the field inspectors. However, such authorization should probably be made in conjunction with a system to monitor field inspectors' activity.

Natural Resource Protection

Oil and gas production can pose potential dangers to other natural resources. The hazards include spillage of oil and contaminated water and contamination of land and water by drilling fluids and waste. While the board has rules covering natural resource protection, our review indicates that an expansion of the rules in the following areas may be necessary.

Location Construction

The field inspectors have documented cases in which oil or other contaminants have flowed onto the surrounding land or into the water supply. This can happen when an equipment malfunction causes oil or salty water to escape. Also, spring run-off or a heavy rain can wash contaminants out of holding pits. An example of the latter occurred near Culbertson. Run-off caused the overflowing of a drill pit on an abandoned location in a grain field. Oily and contaminated water ran through the field and down the barrow pit of a nearby county road. Illustration 10 shows the location covered by water.

DRILLING LOCATION UNDER WATER

Illustration 10

The board rules require diking around oil storage tanks but not around other oil facilities. Expansion of the board rule to allow inspectors to require proper diking of potential overflow or spillage areas could help alleviate the problems. The board should consider a rule change which would authorize the inspectors to require diking under certain conditions.

Salt-based Drilling

The final area relates to the fluid used to drill many of the deep wells in eastern Montana. The drilling operations use salt-based solutions called "drilling mud" to drill through the salt formations. The saltwater and mud are much saltier than seawater and can cause substantial damage to land and water if improperly handled. During drilling, the saltwater and mud are kept in pits at the site. Board rules require that these pits be constructed so they are impermeable, but the rules do not further define impermeable. Most companies use plastic pit liners to assure proper containment. However, a few companies either do not use liners or use liners of such quality that they can be easily torn (see Illustrations 11 and 12).

UNLINED SALT-BASED DRILLING PIT

Illustration 11

TORN LINER IN SALT-BASED DRILLING PIT

Illustration 12

Another practice of salt waste disposal is the burying of contaminants on site. This seems inconsistent with having a pit liner since what was contained by the liner is now being introduced into the ground.

The board could help alleviate these problems by revising its rules. It could consider rules to require pit liners for all salt-based drilling pits, to establish minimum pit liner standards, and to prescribe rules for the disposal of salt-based residues.

EFFICIENCY OF BOARD OPERATIONS

During our review, we examined the efficiency of the design of various aspects of board operations. We found several areas in which greater efficiency could be obtained. These areas are discussed in the following sections.

Drilling Permits

We noted two areas relating to drilling permits in which the efficiency of board operations could be improved and the regulation of the industry could be made less burdensome. These include lengthening the time the drilling permit is effective and granting the staff more authority over exceptions to spacing and directional drilling.

Drilling Permit Duration

Board rules state that drilling permits issued by the board are effective for 90 days, with an additional 90-day extension available upon application. The board's staff suggested that the drilling permit be effective for 180 days. This would have the same effect as the present 90-day permit plus the 90-day extension and provide for a reduction in paperwork. Companies would not have to file for the 90-day extension but would have the full 180 days automatically. It would give companies additional flexibility in planning their drilling. Also, companies which forget to file for the extension would not have to reapply for a permit. The staff would benefit by not having to keep track of the extensions. For permits on federal lands, the longer duration would be more in line with the USGS which has a one-year duration on permits. The board should consider a longer duration for permits without an extension period.

Exceptions to Spacing and Directional Drilling

The board has established general rules for the spacing of wells for most of the state and special rules for the spacing of wells in certain designated areas. The rules are designed to provide for the orderly development of oil and gas drilling and to provide for maximum long-term production.

A permit to drill a well may not be issued unless the well conforms to the spacing rules or the company has received a specific exception from the board. Therefore, the board must hold a hearing on all exception requests. At these hearings, the board receives advice from its staff on the appropriateness of the exception. During the past six years, the board has been asked for spacing exceptions 93 times, accounting for 21 percent of its hearings. In virtually all cases, the board has approved the exception.

Another area in which the board conducts hearings is for directional drilling. The board's rules require a hearing and special permission before a company may drill other than a vertical well. This is not as prevalent as the spacing exceptions since it has happened about a dozen times in the last six years.

These two types of hearings put a burden on the board because of the need for more and longer hearings and on the companies which have to wait a month or two until a hearing. One solution to these exception delays would be to delegate additional authority to the staff. In cases where there is no objection from other interested parties, the staff could be given the discretion to issue a permit. If there were objections by any parties, or the company wanted to appeal a staff denial, a board hearing would still be available. This would relieve some of the board's workload, but it still would provide for hearing requests for delineation of fields, changes in the rules of fields, and many other issues.

Collection and Statistical Functions

The Centralized Services Staff of DNRC handles two functions for the board; the collection of the Oil and Gas Producers Tax and the compilation of statistics on production. The board pays $40,000 to Centralized Services for the 2.5 FTE which provide these services. We found that increased efficiency and a better reporting structure could be achieved by transferring these functions from Centralized Services to the Oil and Gas Conservation Division.

Collection of Taxes

There is a duplication in the oil and gas tax collection functions between the Centralized Services staff of DNRC assigned to the board, and the Department of Revenue. The Oil and Gas Producers Tax collected by DNRC is based on the gross value of production reported by the producer. The Oil and Gas Severance Taxes collected by the Department of Revenue are based on the same gross value of production. The only real difference between the two is the tax rate.

Consolidation of the collection of the Oil and Gas Producers Tax and the Oil and Gas Severance Tax would be advantageous. It would mean that companies would file one set of returns instead of two. The consolidated collection could reduce overall staff needs since only one set of returns would need to be processed. We contacted the Department of Revenue and an official responded that they would support consolidation of the tax collection functions within the Department of Revenue. He noted that the Department of Revenue could collect the Oil and Gas Producers Tax and deposit it in the board's earmarked account with little additional cost.

We noted that the Department of Revenue has a field audit staff which collects at least ten times its cost through the audits. DNRC has no such capability. It can only check the tax returns against the monthly production reports.

A consolidation of the collection functions within the Department of Revenue should be more efficient. Therefore, the Legislature should consider the consolidation of the collection of oil and gas taxes.

Statistical Function

DNRC's Centralized Services has nearly 2 FTE to compile production statistics for the board. This function is unrelated to other Centralized Services Functions and is for the exclusive benefit of the board. The board has limited control over the statistical function. The executive director of the Montana Petroleum Association noted that some delays in statistical reports were reported to have resulted from the board's limited control over the statistical function. A transfer of the statistical function to direct board control would provide for improved organization and reporting responsibilities for both Centralized Services of DNRC and the board. The board and DNRC should consider implementing such a transfer. If the transfer is made, the funding and staff should be transferred as well.

Vehicles

The field inspectors are required to use their own vehicles when making inspections. They are reimbursed 20 cents per mile for the first 1,000 miles each month and 17 cents for each mile thereafter. The reimbursement is insufficient to cover the cost of operating a pickup or four-wheel drive on backroads. We reviewed the State Motor Pool's rental rates and found that they charge 25.75 cents per mile for pickups and 28 cents per mile for four-wheel drives.

Since the inspectors' reimbursement rate is based on the Internal Revenue Service's rates for passenger car travel, not pickups or four-wheel drive vehicles over rough terrain, it is unlikely that the field inspectors are reimbursed at a rate which covers their costs. All of the inspectors use either pickups or four-wheel drives. To prevent the field inspectors from having to pay for unreimbursed vehicle costs, the board could consider leasing or purchasing vehicles for the field inspectors. We estimate that the board could purchase and operate vehicles for the field inspectors for approximately $80,000 over a three-year period, or $8,000 more than they would pay over the same period if they reimburse at the current 20 cent/17 cent per mile rates.

Setting of Oil and Gas Producers Tax

Section 82-11-131, MCA, provides that the board may set the amount of the Oil and Gas Producers Tax without notice or hearing up to a maximum of two-tenths of one percent of the gross value of production. The size of the tax also does not have to be codified in the Administrative Rules. The lack of notice or hearing prior to changing the tax rate limits public input.

Also, legislative scrutiny tends to be impaired since the tax rate does not have to be codified in the Administrative Rules. The Administrative Code Committee reviews all proposed rule changes and provides for legislative input into the changes.

This provision is inconsistent with similar authority given to other agencies to set tax rates and fees. Those other agencies are required to provide public notice, hold hearings, and formally change their rules to implement changes in tax rates or fee structures. The Legislature should consider making the tax rate setting procedures required for this board consistent with those for other agencies.

CLARIFICATION OF STATUTES

During our review, we noted four areas in which the statutes are unclear. The following sections address concerns relating to the effective date of board member appointments, to contracts with former employees, to reclamation of old wells, and to the board's environmental regulatory authority.

Effective Date of Appointments

The statutes relating to all quasi-judicial boards provide that four of the board members serve terms concurrent with the Governor's, while three serve a term beginning the third year of the Governor's term. Section 2-15-124(3), MCA, provides that the board members' terms begin when appointed, while section 2-15-124(2), MCA, provides that members do not begin serving until confirmed by the Senate. The Governor's attorney has interpreted these sections to mean appointees begin serving when appointed unless the Senate is in session. Then the appointees do not begin serving until the date they are confirmed.

This inconsistency between the dates of appointment and confirmation of the board members caused some problems for the Board of Oil and Gas Conservation and indicated a potential problem for other boards. The executive secretary did not know which group (old or new) to have at a meeting since there was uncertainty over when the new members would be confirmed. Therefore, a quorum was not always assured. The Legislature should consider clarifying when new board member terms begin.

Contracts with Former Employees

Because the board was unable to find a qualified replacement for the former petroleum engineer, they contracted with his new employer for his services. This contract poses a possible conflict with section 2-2-201, MCA which states that:

> "A former employee may not, within six months following the termination of employment, contract or be employed by an employer who contracts with the state or any of its subdivisions involving matters with which he was directly involved during his employment."

The former employee is performing some of the functions he did while employed by the board. He is advising the board concerning petroleum engineering matters at its hearings. However, he is not providing advice on specific cases in which he was directly involved during his employment with the board.

The question is whether the Legislature intended to prohibit contracts with former employees for the performance of similar duties or whether the Legislature intended only to preclude a former employee from contracting to work on specific items with which he dealt while employed by the agency. The Legislature should clarify its intent on this issue to provide guidance to agencies on when they may contract with former employees.

Reclamation of Old Wells

We were informed by the staff that there may be many improperly reclaimed wells drilled prior to the board's creation in 1954. Some of these sites are now showing up as problem areas leaking gas or covering land with oil. One example is a leaking gas well north of Shelby which has prevented crop growth on several acres of land. The farmer would like the well plugged, but the well was drilled in 1925, and the responsible company is out-of-business.

The Legislature has recognized this potential problem and has defined a procedure to pay for the cleanup. Under the statutes, DNRC is to set up a procedure for cataloging reports of wells which were not plugged and abandoned properly. Then DNRC is to report these cases to the board for action. If the board determines that an active company is responsible, it is to withhold drilling permit approvals until the company agrees to cleanup the site. If the responsible party cannot be found or is no longer active, Resource Indemnity Trust money can be used to reclaim the site. The board has received an appropriation to fund reclamation from the Trust Fund. DNRC's approach has been to await reports of improper abandonments rather than actively soliciting them. Since DNRC has not received many such reports, there has been little activity relating to this statute. The Legislature should clarify whether it wants the board and DNRC to implement a program to actively solicit reports of improper abandonments.

Board Environmental Regulatory Authority

Two concerns noted during our review indicate a need for clarification of the board's authority relating to environmental protection. The following sections discuss our concerns relating to flagging of pits and the applicability of the Montana Environmental Policy Act.

Flagging

The Department of Fish, Wildlife and Parks (DFWP) reports incidents of waterfowl having died after coming in contact with oily discharge on drilling and evaporation pits. DFWP officials believe flagging is a simple and effective way to prevent waterfowl deaths associated with the pits. Stringing flags across the pits scares waterfowl. We noted that the USGS requires flagging of pits on federal locations. Illustration 13 shows a flagged pit. Since the board does not have any rules requiring flagging, some companies do not use it. During our review, we noted cases of both flagged and unflagged pits.

FLAGGED PIT

Illustration 13

When we discussed this potential area for additional rules with the board, they expressed a concern that the present statutes do not give them sufficient authority. The board's concern seems to be a result of the title of the original act creating the board which indicated that the primary purpose of the board was to prevent the waste of oil and gas. We reviewed the statutes relating to the board's authority to protect the environment and its interpretation of those statutes through its rules. While the statutes do not specifically grant the board authority in this area, rules concerning flagging appear to be a logical extension of board authority.

As noted previously, the board is the principal regulatory agency with respect to the oil and gas industry. Under current statutes, the present board is hesitant to exercise regulatory authority over some environmental areas. Therefore, the Legislature should consider clarifying the board's authority to regulate environmental protection in the activities of the oil and gas industry.

Applicability of MEPA

The 1971 Legislature passed the Montana Environmental Policy Act (MEPA). Among other things, it requires state agencies to assess the impact of their actions on the human environment and to consider this impact in their decision-making processes. Some state agencies have adopted formal rules and procedures to assure compliance, but the board has not. There is no mechanism for the board to assess the environmental impact of its actions.

The question of the board's compliance with MEPA arose during a dispute between an operator and the Department of Fish, Wildlife and Parks. The dispute was settled prior to any determination on the applicability of MEPA.

As drilling activity increases in the Overthrust Belt of western Montana, the question of the board's compliance with MEPA is likely to arise again, especially since this area is considered more environmentally fragile than other areas of the state. The Legislature or the courts may be called upon to decide what, if any, environmental assessment the board is required to perform under MEPA. The Legislature should consider clarifying the applicability of MEPA to various state agencies including the board.